

RECEIVED  
CENTRAL FAX CENTER

NOV 06 2004

Law Offices of Richard L. Huff  
19304 Olney Mill Road, Olney, MD 20832  
Tel.: (301) 924 2169 Fax: (301) 570 8166  
E-mail: [richhuff@rcn.com](mailto:richhuff@rcn.com)

FAX

November 6, 2004

To: Examiner Luby  
Art Unit 3611  
Fax No. (703) 872 9306

From: Richard L. Huff  
Fax No. (301) 570 8166  
Sheets including this sheet: 4

<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)	Application Number	104056,712	
	Filing Date	1/28/2002	
	First Named Inventor	Pezana	
	Art Unit	3611	
	Examiner Name	Luhy	
Total Number of Pages In This Submission	3	Attorney Docket Number	PERE100

**RECEIVED**  
**CENTRAL FAX CENTER**  
**NOV 06 2004**

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> After Allowance Communication to TC
<input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<b>Remarks</b> Request for withdrawal of Office Action	
<b>SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT</b>		
Firm Name	Law Offices of Richard L. Huff	
Signature	<i>Richard L. Huff</i>	
Printed name	Richard L. Huff	
Date	11/6/2004	Reg. No. 33627

CERTIFICATE OF TRANSMISSION/MAILING		
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:		
Signature		
Typed or printed name		Date

This collection of information is required by 37 CFR 1.5. This information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: Perena

PATENTS

RECEIVED  
CENTRAL FAX CENTER

Serial No. 10/056,712

Group Art Unit: 3611

NOV 06 2004

Filed: 01/28/2002

Examiner: Luby

For: WALKING ASSISTANCE DEVICE

**REQUEST FOR WITHDRAWAL OF REJECTION**

The Office Action dated 11/03/2004 is considered to be improper in that there is no provision for such action in the M.P.E.P. or 37 CFR, and applicant requests withdrawal of this Office Action and passage of the application to issue.

Section 1.198 of Title 37 states:

When a decision by the Board of Patent Appeals and Interferences on appeal has become final for judicial review, prosecution of the proceeding before the primary examiner will not be reopened or reconsidered by the primary examiner except under the provisions of § 1.114 or § 41.50 of this title without the written authority of the Director, and then only for the consideration of matters not already adjudicated, sufficient cause being shown.

There is no indication of record that the Director has given written authority for the reopening of prosecution for this application.

Section 1.114 is not pertinent to the present situation.

Section 41.50 describes the decisions and other actions which may be taken by the BAPI. This Section is divided into subsections (a)-(f).

Subsection (a) states that the BAPI may affirm or reverse the decision of the examiner in whole or in part on the grounds and on the claims specified by the examiner. This is what occurred in the present case. This Subsection also states that the Board may also remand an application to the examiner. This did not happen.

Subsection (b) states that should the Board have knowledge of any grounds not involved in the appeal for rejecting any pending claim, it may include in its opinion statement to that effect with its reasons for so holding, which statement constitutes a new ground of rejection of the claim. While it appears from the record that the Board may have had knowledge of grounds not involved in the appeal for rejecting pending claims, the Board chose not to make a new ground of rejection as provided by this Subsection.

Subsection (c) gives the Board the right to include an explicit statement of how a claim on appeal may be amended to overcome a specific rejection. This did not happen.

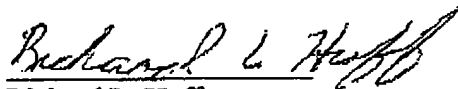
Subsection (d) gives the Board the right to order the appellant to additionally brief certain issues. This did not happen.

Subsection (e) discusses the effect of a remand by the Board. This Subsection does not apply to the current situation.

Subsection (f) discusses extension of time. This Subsection does not apply to the current situation.

Since the Examiner has reopened prosecution, since Sections 1.114 and 41.50 do not apply, and since there is no evidence that the Director has given written approval, it appears that the Examiner has acted contrary to authority in reopening prosecution. Accordingly, applicant respectfully requests that the Office Action dated 11/3/2004 be withdrawn and the claims indicated as allowable by the Board be passed to issue.

Respectfully Submitted,

  
Richard L. Huff  
33627 (301) 924 2169